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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CHRISTINE D.,

Petitioner,

v.

THE SUPERIOR COURT OF THE
COUNTY OF LOS ANGELES,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Real Party in Interest.

B239650

(Los Angeles County
Super. Ct. No. CK74780)

ORIGINAL PROCEEDING; petition for extraordinary writ. Susan Patricia Spear, Judge. (Retired judge of the L.A. Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Petition denied.

Victoria Doherty, under appointment by the Court of Appeal, for Petitioner.

No appearance for Respondent.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Real Party in Interest.

Christine D. (Mother)¹ challenges the February 22, 2012 order of the juvenile court terminating reunification services and setting a permanency planning hearing pursuant to Welfare and Institutions Code section 366.26.² Mother contends that insufficient evidence supports the juvenile court's decision to deny family reunification services to her regarding minor Daniel D., who was born in October 2007.

We deny the petition, because clear and convincing evidence supports the juvenile court's order.

BACKGROUND

Mother has a long history of drug abuse. Mother began abusing marijuana when she was 13 years old and began abusing methamphetamines when she was 29 years old. She has abused methamphetamines for nine years. In 1995, Mother's older child Nicole S. was removed from her care and placed in guardianship with maternal grandmother Gloria P. because of Mother's drug use. Between 1995 and 1999, Mother was arrested four times, mostly for drug offenses. In 1999, Mother was convicted of felony possession of a controlled substance and was sentenced to state prison for two years.

By 2004, Mother was diagnosed as "Bipolar, Manic Depressive."

In 2004, after Mother physically attacked maternal grandmother Gloria P., maternal grandmother Gloria P. obtained a restraining order against Mother. Later that year, Mother was convicted of three misdemeanors: battery against maternal grandmother Gloria P., vandalism, and contempt for disobeying the restraining order. After Mother was released from jail, she entered a residential treatment program, Angel Step 2, and completed seven months of treatment.

Daniel was born in October 2007. On September 26, 2008, the Department of Children and Family Services (DCFS) filed a petition on behalf of Daniel, alleging, first, that Mother and Father engaged in violent altercations in Daniel's presence. Daniel was

¹ Francisco U., the presumed father of Daniel, is not a party to this petition.

² All statutory references are to the Welfare and Institutions Code.

released to Mother, but when, on January 28, 2009, Mother tested positive for methamphetamines, the petition was amended to allege that Mother had a history of drug abuse and a positive toxicology screen result for methamphetamines. On February 5, 2009, Daniel was detained in Shelter Care, with monitored visitation by Mother. He was then placed with maternal uncle Jeffrey D. and maternal aunt Margaret D.

DCFS provided family reunification services to Mother from September 23, 2008 to March 15, 2010. In 2009, Mother completed a six-month outpatient program at the Southern California Alcohol and Drug Program and completed the parenting class and anger management series at Intercommunity Guidance Center. Throughout the period, Exchange Club Family Support continued to provide case management services, including weekly visits to advise Mother on parenting skills in the home, and daily case management for one year. Mother was attending a weekly Helpline Counseling domestic violence group. Connie Smith Williams provided individual counseling, with Pacific Clinics providing supporting medication.³

Family reunification services were terminated in March 2010, when DCFS agreed to allow Daniel to live with Mother on the following conditions: that she submit to random drug tests, continue to attend the LACADA drug program, participate in individual counseling, and submit to psychiatric evaluation.

Mother relapsed. She abused methamphetamines in November 2010, claiming, as the cause of the relapse, stress she endured in attending a Thanksgiving dinner at the insistence of her 20-year-old daughter Nicole. She attacked Nicole and was arrested. Maternal uncle Jeffrey D. and maternal aunt Margaret D. took care of Daniel while Mother was in jail. Ordered by the criminal court “to participate in Prop. 36,”⁴ Mother

³ Zoloft (100 milligrams), Wellbutrin (75 milligrams), Abilify (15 milligrams) and Lamictal (100 milligrams) were prescribed for Mother.

⁴ The reference to “Prop. 36” is a reference to the “appropriate drug treatment program” that the criminal court ordered that Mother participate in and complete: “[A]ny person convicted of a nonviolent drug possession offense shall receive probation. As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. The court shall impose appropriate drug testing as a condition of

enrolled in LACADA, completing a three-month program.⁵ Mother then voluntarily enrolled in LACADA for an additional three months, but she relapsed during the second three-month period.⁶

On June 21, 2011, Anabel Weekly Lima, of Exchange Club Family Support, informed DCFS that Mother “had been completely out of control during her weekly visit, while managing Daniel, yelling at him and the case manager. She [Lima] suspected mother was using methamphetamine[s] again.” A July 21 referral came from Mother’s neighbor who had seen Mother slap, and heard Mother yell at, Daniel.

In a letter dated October 13, 2011, Sandra Dalton, LACADA’s Project Manager, informed the Department of Children and Family Services that Mother was not in compliance with the substance abuse program and, on September 14, Mother had tested positive for methamphetamines. Dalton recommended that Mother “be placed in a residential treatment facility that can assist with her mental health issues [and drug abuse issues] conjointly.”

In the October 18, 2011 Detention Report, Children’s Services Worker (CSW) Janie I. Russell stated: “When CSW visited mother on 10-11-2011 to discuss her failure to comply with her safety plan she stated she had no transportation, no one understands her, and she just needs help. During the same visit mother began to express her concern that something was physically wrong with her. She stated she had been to the emergency room, to her physician, and to a dermatologist. She thought she had scabies. Mother had thrown most of Daniel’s toys away, believing they had scabies on them, and at one point insisted she had scabies on her teeth. She had gotten rid of her couch and her TV, believing they had scabies on them. The apartment consisted of a kitchen table and

probation. The court may also impose, as a condition of probation, participation in vocational training, family counseling, literacy training and/or community service.” (Pen. Code, § 1210.1, subd. (a).)

⁵ DCFS did not open a new case for Daniel, because Mother tested negative for methamphetamines.

⁶ The record does not provide the actual date of relapse.

chairs and bed in the bedroom. She stated she had been advised by her dermatologist to stop treating herself and Daniel for scabies as they didn't have scabies. She then insisted it must be ringworm. She continued to advise this CSW that everyone is asking her if she is taking her psych meds, and telling her she is crazy, but she was sure something was really wrong with her. She also stated she has no help or support, and no one really understands her. She has tried to clean the apartment, thrown out all the bedding, washed everything, the walls included, but just couldn't get rid of the bugs.

[¶] . . . [¶]

“ . . . DCFS is critically concerned about this mother's chronic instability, continued drug abuse, failure to comply with her safety plan, and delusional state of mind. In addition, her continued bizarre behaviors, and extremely poor parenting skills are reported by neighbors, her apartment manager, and her former case manager with Exchange Club Family Support Services. . . . She screams at Daniel uncontrollably, calls him names, and at one point a neighbor stated she locked him in the apartment alone. At that incident, he was screaming loudly.

“Mother received 18 months of services from DCFS, and then 12 continued months of community services, in house services, drug rehab two times, parenting classes, in house parenting assistance, and visiting therapist through the Whole Child currently and has at this time made little improvement in managing the 4 year old Daniel.”

On October 18, 2011, Daniel was detained with maternal uncle Jeffrey D. and maternal aunt Margaret D.

On November 8, 2011, Department Investigator (DI) Sheila Lota interviewed Mother in person. In the November 17, 2011 Jurisdiction/Disposition Report, Lota stated: “The mother Christine [D.] was very agitated during this interview with this DI and her time frames were very ‘sketchy’ at best when this DI attempted to gain detailed information about the mother Christine D[.]’s drug use and relapses. The mother Christine . . . states that she has all throughout consistently adhered to her medical treatment of Bipolar/Manic Depressive diagnosis. The mother Christine D[.] states she

has maintained her mental health/psychiatric appointments at Pacific Clinics where she is monitored every 8 weeks. The mother Christine D[.] states she is currently prescribed Zoloft, Wellbutrin, Abilify and Alumina

“The mother Christine D[.] stated when she is under the influence of methamphetamines, she is sensitive and can ‘trip.’ The mother Christine D[.] admitted that the child Daniel has been present with her when she uses the methamphetamines. The mother Christine D[.] states she does not ‘trip’ with the child Daniel[] because ‘he does not push my buttons.’ The mother Christine D[.] stated that even when she is using, she cares for the child Daniel and ensures that he is fed and clothed and clean. When asked about what she felt the risks were to the child Daniel when she using methamphetamines, the mother Christine D[.] answered that she is less aware . . . and does not make the right decisions. The mother Christine D[.] stated that she does ‘very well when she is in a program’ and that LACADA did not work for her because it was not structured enough and did not provide the support and supervision that the mother Christine D[.] . . . felt she needed. The mother Christine D[.] also stated that she feels she must obtain employment because she has not worked for the last 4 years since the child Daniel was born and feels that her unemployment has allowed her too much time that it has led to her relapses.”

Father Francisco U. was interviewed privately on November 14, 2011. DI Lota stated in the November 17, 2011 Jurisdiction/Disposition Report that he told Lota that he believed that Mother began using drugs when Daniel was four or six months old. Father stated that when Mother was changing Daniel’s diaper, he urinated; Mother “became very angry, grabbed the wet diaper[] she had just taken off and threw the wet diaper against the child Daniel’s face.” Father recounted another incident during which Mother was angry with Daniel and threw a blanket over his face. Father told DI Lota that he visited with Mother and Daniel about two weeks before Daniel was detained; at that time, Father saw that Mother sold her food stamps to buy drugs and she was verbally abusive to Daniel. He also reported that Mother would collect Daniel’s urine to use, instead of her own, for drug tests. Father stated that he has seen three small photograph albums of

family activities in which Daniel participated with maternal uncle Jeffrey D. Referring to the quality of care that maternal uncle Jeffrey D. provided to Daniel, Father told DI Lota, “[W]e can’t do this for Daniel.” Father would like Daniel to remain with maternal uncle Jeffrey D.

Maternal uncle Jeffrey D. was interviewed on November 15, 2011, by telephone. He stated: “Daniel [can] be aggressive with the mother Christine D[.] whereby the child Daniel will ‘yell and scream at her (the mother Christine D[.]).’ However, Jeff D[.] states that although the child Daniel can be ‘rough and demanding’ with the mother Christine D[.], the child Daniel is very responsive and in fact appears to prefer ‘structure’ and discipline because Jeff D[.] states the child Daniel is not aggressive or inappropriate with Jeff D[.] or with the maternal aunt Margaret D[.] although the child Daniel will still ‘act like any 4 year old’ and may not want to go to bed when told for instance. However, Jeff D[.] states the child Daniel follows instructions and in fact thrives on a set schedule and structure and ‘loves it.’

“Jeff D[.] states that is unfortunate because in all of the times when he has had the child Daniel for visits, the child never wants to return to the mother Christine D[.]’s home and care. Jeff D[.] states that even now, the child Daniel ‘doesn’t look for his mom and doesn’t want to talk on the phone with her . . . he doesn’t look for his dad either.’ Jeff D[.] states that the mother Christine D[.] has not changed in 21 years and ‘does only the minimum for Court so she can keep her benefits.’ Jeff D[.] states that the mother Christine D[.] ‘can stop using drugs for 6 months’ just to get the child Daniel back home but ‘it will never stop’ permanently. Jeff D[.] states that it would be devastating for him to know if the child Daniel will be returned to the mother Christine D[.]’s home and care at any time because the child Daniel ‘needs stability and a chance to have a normal life and an education and it would be a danger to him’ if the child Daniel is returned to the home and care of the mother Christine D[.] given her extensive history with drug use.”

By letter dated December 2, 2011, Sandy Mesa, M.S.W., Mental Health Therapist at Pacific Clinics, notified DCFS that Mother, diagnosed as having Bipolar Disorder, was not compliant “in scheduling and attending medication appointments every 8 weeks.”

Mother is currently enrolled in LACADA'S residential treatment program, Allen House, with a "tentative graduation date" set for July 2012. The February 8, 2012 Progress Report shows that Mother is attending "20 structured groups a day including Anger Management." The Progress Report shows that her participation in group counseling, individual counseling, and adherence to monthly treatment plans is "good," but her motivation to resolve her problems and her appropriate behaviors is "fair."

At the February 22, 2012 contested adjudication hearing, Mother testified that she has a nine-year history of using methamphetamines and before that, she had a history of using marijuana. She was in a residential treatment program for seven months in 2004, and the longest period of time that she did not use drugs was after her release from that program in 2004 until she relapsed in 2008.⁷ She further testified that Daniel was removed from her care at the age of 13 months and was returned at the age of 19 months. A "little" after he was returned to her care, she relapsed.

Mother explained her history of relapse, testifying, "I stopped doing what I was supposed to be doing, like going to meetings [and] talking to my sponsor. I haven't fully worked the steps this time. I want to work the 12 Steps. In order to stay in recovery, you need to work the 12 Steps. I . . . did a fifth step this time around. I wanted to do all 12 steps. That is part of recovery. And so I didn't stay connected with all my sober support."

Mother further testified that she was currently in a residential treatment program, Allen House, and had been in that program for one month. She described the Allen House program as a "total different kind of approach to recovery. I go from 16 hours a day. We are working on behaviors. I think behavior has a lot to do with drug use."

In denying family reunification services to Mother pursuant to section 361.5, subdivision (b)(13), the juvenile court stated, in part: "[T]he court denie[s] F.R. [family reunification services] under 361.5(b)(13). I think she does have a chronic extensive and

⁷ Mother testified that she relapsed in 2008; her subsequent "dirty" drug test was in January 2009.

chronic history of drug use. And I think she has resisted court-ordered treatment given the fact she was in a Prop. 13 program. And she has relapsed again. And this child is yo-yoing back and forth between the aunt and uncle who have taken him. Mom gets him back, he gets detained. Mom tries to get him back.

“And I think it is not in child’s best interests. And minor’s counsel is opposed to the offer of F.R.

“So I am going to deny F.R. The court can’t find it is in the child’s best interests by clear and convincing evidence for mother—to offer F.R. And I will tell both Mom and Dad that there is an avenue called a 388 petition, which your attorneys will explain to you.

“If you are in your programs and continue[] to make good progress, then you can ask for a change in the court’s order.”

DISCUSSION

Section 361.5, subdivision (b) provides: “Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court’s attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.”

“When a child is removed from the custody of his parents, reunification services must be offered to the parents unless one of several statutory exceptions applies. [Citation.] If a parent is described by an exception, the juvenile court ‘need not’ provide him or her reunification services. [Citation.] Under most of the exceptions, the juvenile court ‘shall not’ order reunification services unless it finds, by clear and convincing evidence, that reunification is in the best interests of the child. [Citation.] Thus, ““ [o]nce it is determined one of the situations outlined in subdivision (b) applies, the

general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources. [Citation.]” [Citation.] The burden is on the parent to change that assumption and show that reunification would serve the best interests of the child.” (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227, fn. omitted.)

Clear and convincing evidence supports the juvenile court’s order.

First, Mother’s use of methamphetamines is extensive, abusive, and chronic. Mother testified that she has abused methamphetamines for nine years, following a lengthy history of marijuana use. In 1999, Mother was convicted of felony possession of a controlled substance and was sentenced to state prison for two years. She returned to drugs in 2004, but was able to rehabilitate herself temporarily, remaining off drugs for four years, until she began to abuse methamphetamines again in 2008. After receiving extensive services, Mother relapsed again in 2010.

Second, during the three-year period prior to the February 22, 2012 contested hearing, Mother has been in at least two sets of programs. In January 2009, Mother enrolled in, and completed, a six-month outpatient program at the Southern California Alcohol and Drug Program and completed the parenting class and anger management series at Intercommunity Guidance Center. Mother also attended a weekly Helpline Counseling domestic violence group, participated in individual counseling with Connie Smith Williams, and was prescribed supporting medication. Mother relapsed less than one year later.

The next set of services was ordered by the criminal court pursuant to Proposition 36. Mother complied with the criminal court orders to participate in further outpatient treatment programs. Although Mother completed a three-month program at LACADA and volunteered for an additional three months, she relapsed during the second period.

Third, Mother’s attempts at rehabilitation unfortunately ended in relapse. Her failure to abstain from drug abuse following these two sets of extensive services over the last three years demonstrates her resistance to court-ordered treatment programs. (*Randi*

R. v. Superior Court (1998) 64 Cal.App.4th 67, 72-73.) Mother's history of failed rehabilitation provides ample support for the juvenile court's decision to decline to offer additional reunification services. (*Laura B. v. Superior Court* (1998) 68 Cal.App.4th 776, 780.) "Within the meaning of section 361.5, subdivision (b)(12), a parent has 'resisted prior treatment' for chronic use of drugs when the parent has participated in a substance abuse treatment program but continues to abuse illicit drugs" (*In re Levi U.* (2000) 78 Cal.App.4th 191, 200.)

Mother's reliance on *In re Brian M.* (2000) 82 Cal.App.4th 1398 results from a misreading of the holding in that case. The mother in *Brian M.* had been previously ordered to complete a drug rehabilitation program as a condition of probation in a criminal case, but she never attended the program. Mother quotes the following language from *In re Brian M.*: "If the Legislature thought that anyone who had a long-term drug habit had, by definition, 'resisted prior treatment,' it could have just provided that reunification services could be denied to anyone with 'a history of extensive, abusive and chronic drug or alcohol use.' It didn't. It required that it *also* be shown that the person has 'resisted prior treatment.' The additional phrase must mean something." (*Id.* at p. 1403, italics in original.) Mother left out the crucial sentence that concludes that paragraph: "We think it means the individual must be shown to have started a program or refused one *at some point*." (*Ibid.*; italics in original, fn. omitted.) Here, Mother started a program—many, many programs—but was unable to sustain sobriety.

Mother contends that she would have not succumbed to drugs had she been placed in a residential treatment program to treat both her drug dependency and her mental illness. Unfortunately, her history belies the contention that Mother's placement in a residential treatment would have prevented further relapse; in 2004, Mother entered a residential treatment program, Angel Step 2, and completed seven months of treatment, but she subsequently relapsed. Mother testified that her current residential treatment program is "different" and focused on behavior, yet there is nothing in the record to provide any indication that the completion of this program, tentatively set for July 2012, would reduce, in any significant way, the chance that Mother would relapse.

It is in Daniel's best interests not to provide yet another set of services to Mother, who has failed to retain her sobriety. Although Mother is currently enrolled in a residential treatment program, it is uncertain whether the outcome would be the same as the last time she was in a residential treatment program—a relapse that may again be accompanied by her mistreatment of Daniel. Mother admits to having abused methamphetamines while Daniel was in her care. Although aggressive with Mother, Daniel thrives on the set schedule and structure provided by maternal uncle Jeffrey D. When he is with maternal uncle Jeffrey D. and maternal aunt Margaret D., he does not ask for Mother, does not wish to speak to her on the telephone, and does not want to return to her care.

Mother acknowledges that she has been diagnosed with Bipolar Disorder and had agreed to comply with her treatment plan, which includes her taking four prescription medications and consulting with her psychiatrist every eight weeks. Mother had not been compliant with her treatment plan; Mother not only failed to attend her medication sessions, she failed to even schedule them.

Again and again, Mother has relapsed. Daniel, like all children, deserves a safe and secure environment.

The petition is denied.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.